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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

In re	)	No.	01-30923 DM
PACIFIC GAS & ELECTRIC COMPANY,	)	Chapter	11
Debtor.	)	Date:	June 1, 2001
	)	Time:	9:30 a.m.
	)	Ct:	Hon. Dennis Montali
	)		22 <sup>nd</sup> floor, 235 Pine Street,
	)		San Francisco

**UNITED STATES TRUSTEE'S OBJECTION TO MOTION OF  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN  
ORDER PERMITTING TRADING IN AFFECTED SECURITIES**

Linda Ekstrom Stanley, United States Trustee, submits this objection to the creditors' committee's motion for an order on shortened time permitting its members to trade in affected securities and commodities (the "Motion"). The Motion should not be granted because it does not establish an effective "ethical wall" to limit the transmission of confidential information obtained by members of the Official Committee of Unsecured Creditors (the "Committee") and their trading units.

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## ARGUMENT

By making the motion for permission to trade affected securities, the Committee implicitly acknowledges what Colliers imparts:

Another aspect of good faith is the avoidance of self-dealing. This means that a member of a chapter 11 committee may not use the position or the information gained thereby to foster the member's own interest as a creditor or an equity security holder. The members also should refrain from trading the securities of, or claims against, the debtor.

L. King, COLLIER HANDBOOK FOR CREDITORS' COMMITTEES ¶ 16.02[2] (2000). The point is simple. The individual interests of some committee members should not be promoted by their receipt of confidential information from debtor. The consequence of violating a member's fiduciary duty can be harsh – claim subordination or disallowance. 11 U.S.C. § 510(c); cf. § 328(c).

In an effort to discharge their fiduciary obligations as committee members and to carry out their ordinary business plans, the committee members request an order permitting members to continue to trade in debtor's securities and to trade in commodities. The Committee intends to establish an ethical wall (as suggested by the Securities and Exchange Commission in a 1991 bankruptcy case) to avoid improper dissemination of confidential information.

The ethical wall described in the motion and the proposed order would not establish a wall of any kind let alone an ethical wall. As presented, the proposal is flawed in the following respects:

1. The motion does not absolutely restrict the transmission of confidential information from committee members – it restricts information to those with a “need to know” but does not define or limit that category;

2. The motion would permit committee members to provide the Committee's confidential information to superiors who control the work of both the trading units and the committee member, potentially leading to situations where the superiors use confidential information to affect trading;

3. Committee members may share information with trading personnel so long as in-house counsel approves. This provision effectively abrogates any control at all over the dissemination of information because the proposed order purports to insulate a party who follows its prescriptions from liability;

4. Committee members may receive information on trading activity in “Affected Commodities” from the trading units in advance of the trades. By “Affected Commodities,” the Committee means natural gas, electricity and other energy-related products. Unless this provision is eliminated, members of the Committee literally might bid against the debtor on forward contracts for the purchase of power knowing what debtor’s intentions to purchase power might be; and

5. Committee members would be free to purchase and sell claims in the bankruptcy case.

By way of example, the order entered in the County of Orange bankruptcy case attached as Exhibit "3" to the motion was much more rigid in its protection of confidential information. The County of Orange order required committee members to either refrain from trading when in possession of confidential information or institute an ethical wall which (1) blocked any confidential information from being passed to the trading units, (2) called for a list identifying by name employees who would not have access to confidential information, and (3) compelled the members' compliance department to review all trades of affected securities for compliance with the order. The proposed order here is a far cry from the County of Orange.

For the foregoing reasons, the court should deny the motion.

Date: May 29, 2001

Respectfully submitted,

Patricia A. Cutler  
Assistant United States Trustee

By: Stephen L. Johnson  
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